

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 15, 1999
at 3:15 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Dale Mahlum, Vice Chairman (R)

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 298, 3/15/1999; HB 183,
3/15/1999; HB 429, 3/15/1999;
HB 458, 3/15/1999
Executive Action: None

HEARING ON HB 298

Sponsor: REPRESENTATIVE DAN FUCHS, HD 15, BILLINGS

Proponents:

Steve Snezek, Montana Association of Realtors

Opponents:

Mark Simonich, Director, Department of Environmental Quality
Joan Miles, Health Officer, Lewis & Clark County Health
Department

Opening Statement by Sponsor:

REPRESENTATIVE DAN FUCHS, HD 15, BILLINGS, presented **HB 298** which is an act clarifying requirements for water supplies for proposed subdivisions. This legislation says the Department does not have the authority to mandate someone install a cistern if their well is dependable, letting FHA and VA and the lot owners determine if they want to drill a well or install a cistern as their water supply. The Department will still be able to recommend a cistern be used under their administrative rules in the plat approval process but they will not be able to mandate a cistern be installed if their well is dependable and meets the state's standards for quality and quantity. **EXHIBIT(nas58a01)** and **EXHIBIT(nas58a02)**.

Proponents' Testimony:

Steve Snezek, Montana Association of Realtors, spoke in support of **HB 298**.

Opponents' Testimony:

Mark Simonich, Director, Department of Environmental Quality, spoke in opposition to the bill as per **EXHIBIT(nas58a03)**.

Joan Miles, Health Officer, Lewis & Clark County Health Department, stated as a Local Health Department they are not really certain what the bill is saying or trying to address. She referred to page 2, line 23 of the bill where it says "The department may not require that a cistern be installed when: (ii) a potable water source is available for hauling within a reasonable distance." That means a cistern cannot be installed when there is no water. As a matter of public policy, when they start approving subdivisions, she asked the committee to review carefully, if it is appropriate to approve the subdivision without that adequate, dependable, safe water supply. From a local perspective they are concerned about the bill in a couple of fashions. At the local level they do not approve or review

water systems. They do, under contract with **DEQ**, initially look at the water systems and make a recommendation. Once that goes to **DEQ** they do not have any control or regulatory authority later on. Their concern lies in if a subdivision was approved with no water source because they were able to demonstrate water could be hauled and then at a later time the property owner decides to drill a well. If it is put into law, she requested it be very clear what public policy is so they know what to do at the local level when working with **DEQ** on subdivisions and when there are issues of their own on the local level, that they know how to respond.

Questions from Committee Members and Responses:

SENATOR KEATING asked if the Department opposed this bill in the House and if the same arguments were used? **Mr. Simonich** stated they did oppose the bill. In the House they were not as certain what the bill did so part of the testimony was as given here today and part was that they were uncertain what the bill did and what it was intended to do.

SEN. KEATING questioned if someone makes an application for subdivision and the water level potential is lacking, does the Department require a cistern at that time? **Mr. Simonich** stated no they do not. It is up to the applicant to tell them what type of water source they intend to use or develop. The Department then looks at that and the information that has been presented, and measure it against three criteria: 1) quality, 2) quantity and 3) dependability. If the proposed water source does not meet any one of those, the application is denied. It is up to the applicant to suggest something different. The rules do allow for alternate water sources.

SEN. KEATING stated if a potable water source is available for hauling within a reasonable distance, where does the water hauler dump the water for the subdivision? **Mr. Simonich** stated probably in a cistern or some type of water holding tank or facility for that water. **SEN. KEATING** stated a cistern is not required if the application is going to be denied on the basis of the criteria for water supply. They would just be told the subdivision is denied because there is no adequate water. **Mr. Simonich** stated that was correct. **SEN. KEATING** said if they come back and say they will install a cistern, what do you base your decision on for cisterns? **Mr. Simonich** stated they would look at the availability of water to be provided to fill the cistern. **SEN. KEATING** questioned the potential for installation of the cistern is in rules and not in the statutes? **Mr. Simonich** stated that was correct. **SEN. KEATING** asked if it was possible for the rules to be changed at some point to require a cistern be installed?

Mr. Simonich stated throughout the rules it tends to lead to a preponderance that wells are anticipated. It would take some revamping to the rules to get to the point where they would be requiring cisterns. **SEN. KEATING** asked if the rules regarding the water well supply were specific in nature as to quality and quantity and dependability or are those subjective? **Mr. Simonich** said they were specific and have specific parameters they refer to. Dependability may not be specific but the definition refers to quality and quantity at all times. **SEN. KEATING** said it appears the bill is here because at some point in the past the Department changed the rules in the middle of the game and this bill is trying to prevent that occurrence again. **Mr. Simonich** stated that is the reason stated for it being here but is not necessarily the way he sees it. The rules were changed initially to try to cleanup some language. Just two years ago the rules were changed from just quality and quantity to include quality, quantity and dependability. He is not certain the change made in 1984 is the total reason for the bill. They did not require a cistern before if there was an adequate water supply and they do not require a cistern today if there is an adequate water supply.

SENATOR GROSFIELD asked for a description of a reasonable distance for hauling and who pays for the availability of a water hauler? **REP. FUCHS** said reasonable distance is determined by the state in the approval process. The individual who owns the lot and has the cistern pays the water hauler. **SEN. GROSFIELD** stated if he were buying a lot would that be disclosed to him by the Realtor or developer? **REP. FUCHS** stated the plat approval would say a cistern and the title policy should disclose it as well as the mortgage lender.

SENATOR GROSFIELD questioned who was responsible for noting a cistern on the plat and that it stays with the plat? **Mr. Simonich** stated the plat approval is done at the county level. The involvement of the Department is in lifting sanitary restrictions.

SENATOR GROSFIELD questioned who was responsible for noting a cistern on the plat? **Ms. Miles** stated in order to be filed in the Clerk & Recorder's Office all that information has to be on the plat. As the local health officer they do sign on the plat. When it comes time to develop the parcel the only thing they can enforce to ensure it complies with the original plat is where the septic system is placed. They do not have authority on the water system. **SEN. GROSFIELD** questioned if someone is interested in purchasing a lot, do they get a copy of the whole subdivision plat or just their lot? **Ms. Miles** stated she thought they could get a copy of the whole subdivision. If someone buys a parcel they should get approval for that parcel. A lifting of

restrictions document issued by the state specifies the water source, what the septic system should look like, solid waste, etc. That becomes a part of the entire plat that is filed so the property owner should get all that information for their parcel.

SENATOR GROSFIELD questioned if there was anything to add to that? **Bonnie Lovelace, DEQ**, stated in regard to the Certificate of Plat Approval, the conditions are enumerated on a letter. There is a Certificate of Survey filed in the county but that piece of paper is also filed on record with the Clerk and Recorder. **SEN. GROSFIELD** said he wanted to know who is responsible to make sure the list gets attached to the documents that the prospective buyer ends up with? **Ms. Lovelace** stated essentially there is no guarantee anywhere in law. In the title search process that often catches those conditions.

SENATOR GROSFIELD asked if there was anymore to add to that? **REP. FUCHS** referred to the application permit used in the subdivision in his district **EXHIBIT (nas58a04)**. It shows where the well or cistern would be located and the county monitors this.

SENATOR COCCHIARELLA questioned why he was a proponent for a bill that appears to cause problems for future purchases in a subdivision? **Mr. Snezek** stated he was not sure this would cause problems for purchases in future subdivisions. The question of whether or not the placement of the water supply is on the plat approval that gets passed on to the future buyer is a question that needs to come up in the disclosure process and/or the title search process. This bill does not encumber that process.

SENATOR COCCHIARELLA questioned where does the issue come from and how far does this go? **REP. FUCHS** stated he became aware of the situation through a development of his father's in the 1970's. As far as the research he has done this past summer with the National Groundwater Association, they do not know of any other state in the country that mandates cisterns be put in where there is a well that meets state standards for quality and quantity. It is a common sense issue.

SENATOR TAYLOR questioned in a subdivision where there is an opportunity to have a well on each plot of land and wells are approved, are you asking to have a backup system? Is there a liability problem? **Mr. Simonich** stated the sponsor said Montana is the only state in the country that mandates the use of a cistern when there is a perfectly good well. He stated Montana does not require a cistern when there is a perfectly good well. If the developer wants a cistern as a back up they approve it and they do not arbitrarily force them to put a cistern in place.

This came about because **REP. FUCHS** father had proposed a subdivision in the 70's. That subdivision proposal was denied because there was a lack of adequate water supply and it did not meet quality, quantity and dependability. That determination was made based on information the developer had provided as well as information collected from the Bureau of Mines and Geology. The developer then came to the Department and proposed an alternate water supply which was a water supply using cisterns. The Department approved that. Since then, there has been difficulty in selling those lots because of the requirement for cisterns. It is more expensive. His problem with the bill is they propose one thing, which was approved and now they want to make sure the Department cannot require them to do what they asked to do in the first place. Once the plan is approved that is what they should have to do. **SEN. TAYLOR** questioned that they approved to haul water and now they do not want to haul the water and want to do it some other way? **Mr. Simonich** said yes. **SEN. TAYLOR** questioned if it had gotten expensive to haul water? **Mr. Simonich** stated not just hauling water but also the additional cost of purchasing and installing the cistern as well.

Closing by Sponsor:

REPRESENTATIVE DAN FUCHS, HD 15, BILLINGS, shared a letter that was requested of a Billings Realtor from the Department in February 1994, prior to **Director Simonich** being there.

EXHIBIT (nas58a05) The letter states a well may be drilled for irrigation purposes only, it shall not be used to fill the cistern. What kind of common sense is that? In a plat approval process where someone submits their plat and says what they want to do, if they have a problem with the aquifer in the area based on the information the developer submits, they should recommend to the people buying lots to use cisterns. They cannot prevent you from drilling a well on your own property and if you get a good well how can they prevent you from using it. That is what the bill is about. He urged the committee's support.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 42; Comments : None.}

HEARING ON HB 183

Sponsor: REPRESENTATIVE RICK DALE, HD 39, WHITEHALL

Proponents:

Jan Sensibaugh, Department of Environmental Quality
Mike Foster, Montana Contractors Association
Don Allen, Western Environmental Trade Association
Jill Andrews, Montana Mining Association
Jeff Barber, Montana Environmental Information Center
Aaron Browning, Northern Plains Resource Council

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE RICK DALE, HD 39, WHITEHALL, presented **HB 183** at the request of the Department of Environmental Quality. This bill is a compilation of several different statutory amendments to the opencut and hard rock mining programs regulated by **DEQ**. This bill was reviewed in a House Natural Resources subcommittee where it was refined. The bill clarified dredge operations. Other clarifications include if a mining operation goes inactive for a certain period of time and part of their improvements in place are being degraded, that company will either have to fix the problem or begin reclamation operations. Bonding and public participation provisions were improved. Annual reporting requirements were increased on sand and gravel and open cut operations where the Department needed that information. This was accomplished without imposing additional permitting requirements on those governed by that part of the regulations. It also accomplished some pragmatic moving around of mineral operations like phosphate from open cut to hard rock and moving soil heap and other open cut operations which had previously been regulated by the Hard Rock Act into the Open Cut Act.

Proponents' Testimony:

Jan Sensibaugh, Department of Environmental Quality, spoke in support of the bill as per **EXHIBIT (nas58a06)**.

Mike Foster, Montana Contractors Association, stated the bill, as originally written, caused the Association some grave concern regarding the open cut mining section. He was impressed with the process the subcommittee went through to fine tune the bill. It was definitely a consensus effort and as a result they stand in support of the bill. The current bill is a good step forward for Montana and these sections of law.

Don Allen, Western Environmental Trade Association, stated a number of **WETA** members are affected by this legislation and they feel it is worthy of support in its present form. It goes a long way to take care of some issues that need to be addressed.

Jill Andrews, Montana Mining Association, spoke in support of the bill. They have one remaining concern and will offer an amendment prior to Executive Action.

Jeff Barber, Montana Environmental Information Center, spoke in support of the bill. They support the changes to the bonding requirements. They like the clarification on the dredging language and urge the committee's support.

Aaron Browning, Northern Plains Resource Council, spoke in support of the bill. They appreciate the effort that has gone into making this a consensus bill and encourage the committee's support.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE RICK DALE, HD 39, WHITEHALL, commended all the people who had worked so hard on the bill to bring it into its present form. He thanked the committee for a good hearing and urged the committee's support.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 20.7; Comments : None.}

HEARING ON HB 429

Sponsor: REPRESENTATIVE JIM SHOCKELY, HD 61, VICTOR

Proponents:

Jack Stultz, Water Resources Division, Department of Natural Resources and Conservation

Patrick Graham, Director, Department of Fish, Wildlife & Parks

Brian Langton, President, Water Coop of Bitterroot

Harvey Hackett, Stevensville

Roxa French, Bitterroot Water Forum

Marshall Bloom, Trout Unlimited

Mike Murphy, Montana Water Resources

Holly Franz, Montana Power Company

Dave Jones, Water Forum member

John Mundinger, Montana Stockgrowers Association

Jim Olson, President, Friends of the Bitterroot

Howard Lyons, Secretary/Treasurer, Bitterroot Stockgrowers

Bob Banner, Charlos Irrigation District
Jack Fou, Stevensville
Rob Johnson, Hamilton, Bitterroot Water Forum member

Opponents:

Brandi Watts, Water Rights, Inc.

Opening Statement by Sponsor:

REPRESENTATIVE JIM SHOCKELY, HD 61, VICTOR, presented **HB 429** which is a bill to temporarily close the Bitterroot River Basin. The basin starts west of Missoula where the Bitterroot comes into the Clark Fork of the Columbia and runs south to the Idaho line. The problem in the Bitterroot is there is no more water for appropriation. As people move into the valley and buy property, they think they have a right to have a pond or irrigate, etc. That is not Montana law. They file on water that does not exist. This bill puts a stop on further appropriation of surface water until the basin closure is terminated. The sub-basins will be opened two years after the state's rights are adjudicated which will be in about three years and in two years the basin could be opened unless the legislature acted. When the basin opens, if there is any water left, the people can file for a right. He passed out letters of support for the committee's reference **EXHIBIT(nas58a07)**.

Proponents' Testimony:

Jack Stultz, Water Resources Division Administrator, Department of Natural Resources and Conservation, spoke in support of the bill as per **EXHIBIT(nas58a08)**.

Patrick Graham, Director, Department of Fish, Wildlife & Parks, spoke in support of the bill as per **EXHIBIT(nas58a09)**.

Brian Langton, President, Water Co'op of Bitterroot, stated he is a fourth generation irrigator in the Bitterroot Valley. The Co'op represents 1500 families that irrigate about 30,000 acres. The only nonconsumptive use of water is pouring one glass of water into another. When you put water into a pond seepage takes place, evaporation takes place and evapo-transpiration takes place. These all consume water. If water is given to a junior right pond it takes away from a senior right holder who is not able to irrigate his land. He encouraged support of the bill.

Harvey Hackett, Stevensville, said he has irrigated in the Bitterroot since 1960. He has served on the Board of the Bitterroot Irrigation District and they support the bill.

Roxa French, Part-time Project Coordinator for the Bitterroot Water Forum, stated the Forum was formed four to five years ago by a group of citizens that felt the Basin stakeholders were the best ones to develop needed policies about water in the Bitterroot. To that end they have developed a mission to learn about their annual water cycle and interrelationship between the surface water and ground water in the Basin. **HB 429** was brought forward by water users and evolved through the forum's consensus process. The bill is citizen driven and consensus based. They urge the committee's support.

Marshall Bloom, Trout Unlimited, spoke in support of the bill as per **EXHIBIT(nas58a10)**.

{Tape : 1; Side : B; Approx. Time Counter : 20.7 - 42; Comments : None.}

Mike Murphy, Montana Water Resources, spoke in support of the bill. Considering the level of appropriations they feel it is appropriate the basin be closed at this point. This will allow time to get through the adjudication process to be more aware of the water situation in the basin.

Holly Franz, Montana Power Company, spoke in support of the bill and stated **MPC** has significant year-round water rights downstream from the Bitterroot at Thompson Falls. These water rights are never fully satisfied in the winter.

Dave Jones, Water Forum member, stated it was his belief there was no new water to be appropriated from the Bitterroot. Any new appropriation would definitely affect either an existing water right holder, aquatic resource or the quality of their water. He encouraged support of the bill.

John Munding, Montana Stockgrowers Association, stated they appreciate the manner in which this legislation was developed and they support **HB 429**.

Jim Olson, President, Friends of the Bitterroot, stated they are an environmental group devoted to sustained use of the resources. He complimented the Water Forum for bringing all interests together on the same plate to support the bill.

Howard Lyons, Secretary/Treasurer, Bitterroot Stockgrowers, spoke in support of the bill as per **EXHIBIT(nas58a11)**.

Bob Banner, Charlos Irrigation District, spoke in support of the bill as per **EXHIBIT(nas58a12)**.

Jack Fou, Stevensville representing three Ditch Companies, spoke in support of **HB 429**.

Rob Johnson, Hamilton, Bitterroot Water Forum member, spoke in support of the bill and referenced a letter from Vernon Woolsey who is a 15 year water commissioner in the Bitterroot **EXHIBIT (nas58a13)**.

Opponents' Testimony:

Brandi Watts, Lee Allen Water Rights, Inc., stated they are a natural resource consulting firm and are responsible for running the notice in the **Ravalli Republic** last week. Since they ran the notice they have gotten 40-50 calls per day from water users in the Bitterroot Valley who were either unaware of the closure or were concerned that the closure would go into effect on them negatively. They do not oppose the closure and feel it is needed, they would like to see some language added to it to protect water users. Two of their main concerns are that the phone calls they are receiving are from people going through the adjudication process right now and they would like the enactment date of the closure not to occur until the adjudication is in preliminary decree. The decree would then be enforceable. They would also like to see non-consumptive uses excluded from the closure.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE JIM SHOCKELY, HD 61, VICTOR, stated the support is overwhelming because it is good for the irrigators and it is good for the fisherman who want the instream flow. Wetlands are not threatened. This does not affect any present use. This only affects new appropriations. It is a good bill with broad support and he encourages the committee's concurrence.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 11; Comments : None.}

HEARING ON HB 458

Sponsor: REPRESENTATIVE KARL OHS, HD 33, HARRISON

Proponents:

**Jerry Wells, Montana Council of Trout Unlimited
Janet Ellis, Montana Audubon Society**

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE KARL OHS, HD 33, HARRISON, presented **HB 458**. This bill instructs the Environmental Quality Council to look into the policies and programs related to streamside corridor and riparian management. In Section 2 it talks about coordinating with existing groups to evaluate existing streamside and Best Management Practices on existing corridors. As things have progressed in the last two weeks the **EQC** has gotten loaded with a number of bills that are all very important issues. As an **EQC** member, he is hesitant to encourage passage of this bill to mandate **EQC** do this when there are so many other important issues that may have to be dealt with. If the work load all of a sudden looks it won't be as heavy, the **EQC**, under current law could do this anyway.

Proponents' Testimony:

Jerry Wells, Montana Council of Trout Unlimited, spoke in support of the bill. They were supporters of the bill in its initial form which gave more authority to **EQC** to recommend policy back to the next legislature. They thought that appropriate in terms of riparian management and corridor management. They urge passage of this bill.

Janet Ellis, Montana Audubon Society, provided a Witness Statement in support of the bill as per **EXHIBIT (nas58a14)**.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE KARL OHS, HD 33, HARRISON, closed.

{Tape : 2; Side : A; Approx. Time Counter : 11 - 16; Comments : None.}

ADJOURNMENT

Adjournment: 5:05 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas58aad)